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Dated: June 18, 2009

Electronic Signature for Elizabeth A. Hanley: /Elizabeth A. Hanley/

Docket No. 117750-02001
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Kenneth Powell *et al.*

Confirmation #: 8889

Application No. 10/593,382

Filed: March 14, 2007

Art Unit: 4121

For: **PHARMACEUTICAL COMPOSITION
COMPRISING A BENZODIAZEPINE
DERIVATIVE AND AN INHIBITOR OF
THE RSV FUSION PROTEIN**

Examiner: PIHONAK, Sarah

Mail Stop Amendment
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir:

In response to the Restriction Requirement set forth in the Office communication dated April 28, 2009 (Paper No.: 20090413), please amend the above-identified U.S. patent application as indicated below.

As a preliminary matter, Applicants would like to thank the Examiner for taking the time to speak with us on Wednesday June 3, 2009. Your assistance is most appreciated.

Based on the Office communication and the telephone call with the Examiner, the Examiner asserts that the instant application contains specie claims that lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1. Specifically, it is the Examiner's position that component (a) and component (b) of the generic claim contains chemical species that lack a special technical feature in view of Church *et al.* (WO 98/45275) and Evans *et al.* (US 4,820,834), respectively. The restriction requirement therefore requires Applicants to "define each of R¹-Rⁿ, X¹-Xⁿ, A¹-Aⁿ and Y groups as required by the benzodiazepine species of component (b) of general formula[s] (V) and (Va)." The

restriction requirement also requires Applicants to define each R^1 - R^n , X, Y, n, Z, Q, A^1 - A^n , B^1 - B^n , and L groups as required for the inhibitor of the RSV fusion protein of component (a)” for general formulas (I) and (II).

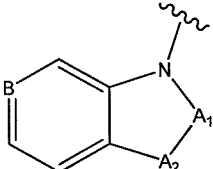
Applicants traverse the Restriction Requirement on the ground that the inventions of claims 1-38 possess a common special technical feature over Church *et al.* and Evans *et al.* PCT Rule 13.2 states that claims shall fulfill the unity requirement “when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression ‘special technical features’ shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.” Applicants respectfully bring the Examiner’s attention to the fact that the claimed invention is directed to a novel composition, and methods of using the same, wherein said composition comprises a component (a) and a component (b). While components (a) and (b) are elements of the claimed inventions, they do not reflect the scope of the invention and are not themselves define species. The common technical feature of claims 1-38 is the pharmaceutical composition comprising both the inhibitor of the RSV fusion protein and the benzodiazepine derivative capable of inhibiting RSV replication. Each of the generic and species claims 1-38 are directed to this common technical feature. Neither Church *et al.* nor Evans *et al.* anticipates, teaches, or suggests a composition comprising component (a) and (b) as defined in the instant application. Accordingly, all the generic and specie claims, 1-38, possess a common special technical feature over both Church *et al.* and Evans *et al.*

Applicants further submit that the search and examination of all the claims will have substantial overlap, and no serious burden will result from searching and examining all claims in the same application. In view of the identity of the claim elements, and the data bases and powerful computer search engines available to the Examiner, there would be no serious burden in examining all the claims in a single application.

Accordingly, it is respectfully requested that the restriction requirement be withdrawn, and that all of the claims presently pending in this application be examined.

Nevertheless, in compliance with the directives in the Office Action and in order to expedite prosecution of the instant application, Applicants make the following election.

For component (a), Applicants elect, *with traverse*, those compounds defined by compound (I) when R^1 , R^2 , and R^3 are each hydrogen, $-X-Y = H$, $Z = -CR^6R^7$, $R^6 = H$, $R^7 = \text{butyl}$

alcohol, $Q =$ , $A_1 = -CO$, $A_2 = -NR''$, $R'' = \text{-cyclopropyl}$, and $B = N$. This specie election is encompassed by claims 1-4, 7-8 11-15, 17-20, 23-24, and 26-38.

For component (b), Applicants elect, *with traverse*, those compounds defined by compound (V) when $R^1 = \text{aryl}$, $R^2 = H$, $n = 0$, $R^4 = H$, $X = -CONR'$, $R' = H$, $R^5 = A_1-Y-A_2$, wherein $A_1 = \text{an aryl}$, $Y = -O-$, $A_2 = \text{an aryl group}$. This specie election is encompassed by claims 1-4, 7-8 11-15, 17-20, 23-24, and 26-38.

Applicants reserve the right to pursue the non-elected claims, or similar claims, in this or one or more subsequent patent applications.

As acknowledged by the Examiner, Applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. It is further Applicants' understanding that the election is for search purposes only and that the search will be extended to additional species upon a finding of allowable subject matter.

For the Examiner's convenience an Appendix (Appendix A) of the pending claims is attached herewith.

Applicants submit herewith the fee set forth in 37 C.F.R. 1.17(a). It is Applicants' understanding that this \$130.00 fee is required for the petition for an extension of time for responding to the Restriction Requirement. However, should any additional fees be necessary, the Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 50-4876, under Order No. 117750-02001.

If a telephone conversation with Applicants' attorney would help expedite the prosecution of the above-identified application, the Examiner is urged to call the undersigned attorney at (617) 449-6500.

Dated: June 18, 2009

Respectfully submitted,

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